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COMMISSION ON JUDICIAL PERFORMANCE
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**REPORT CONCERNING ADOPTION ON MARCH 23, 2011
OF ADDITIONS AND AMENDMENTS TO RULES OF THE
COMMISSION ON JUDICIAL PERFORMANCE**

Pursuant to its rule-making authority under article VI, section 18, subdivision (i) of the California Constitution, on December 20, 2010, the Commission on Judicial Performance circulated for public comments a set of proposals for additions and changes to certain of its rules. Following consideration of the comment received, the commission adopted the proposed rule amendments at its meeting on March 23, 2011, as summarized below. The text of each addition and amendment is attached and the final version of the amended rules may be found on the commission's Web site at www.cjp.ca.gov.

I. EXPLANATION OF ADDITIONS AND AMENDMENTS

- A. Addition of subdivision (p) to rule 102 authorizing disclosure of information revealing possible violations of the Political Reform Act to the Fair Political Practices Commission.

Prior to the amendment, the commission rule concerning confidentiality authorized disclosure of information to the Fair Political Practices Commission (FPPC), as a regulatory agency, only upon the retirement or resignation of a judge. Rule 102 allows for disclosure of confidential information concerning a judge in other contexts, such as to prosecuting authorities and to the Chief Justice when a judge is under consideration for judicial assignment. The proposed amendment would authorize disclosure to the FPPC when the commission has information which reveals that the judge may have violated the Political Reform Act or FPPC regulations.

No comments were received.

- B. Addition of subsection (5) to subdivision (c) of rule 109 authorizing a staff inquiry or preliminary investigation of a complaint against a subordinate judicial officer that was closed by the local court because the subordinate judicial officer resigned or retired.

The commission has received complaints regarding subordinate judicial officers (SJO) that were closed by the local court without an investigation because the SJO retired or resigned before the complaint was received. Under rule 109(c)(1), the commission can open a staff inquiry or preliminary investigation of an SJO based on a request from a complainant within 30 days after being notified by the local court of its disposition of the matter if “the commission concludes that the local court may have abused its discretion in the disposition of such complaint.” In situations where the SJO has retired or resigned and the court closes the complaint on that basis, there can be no abuse of discretion by the local court and thus, before the amendment, no basis for the commission to open an investigation. The amended rule authorizes the commission to open an investigation and exercise its authority to have the SJO declared unfit to serve as an SJO in any court when a complaint was closed by the local court because the subordinate judicial officer resigned or retired before the complaint was received.

No comments were received.

- C. Amendment to rule 122(g)(2) extending provisions concerning discovery depositions until December 31, 2012.

Prior to the amendment, rule 122(g)(2), which allows for a limited number of discovery depositions during formal proceedings, provided that its provisions shall be operative until December 31, 2010, unless after review, they are reenacted by the commission. Because discovery depositions have only been conducted in one formal proceeding since the enactment of rule 122(g)(2), the commission voted to extend the sunset provision for two years to coincide with the next biennial rules review.

The commission received three comments from attorneys in favor of continuing the discovery deposition provisions on an interim trial basis.

- D. Amendment to rule 129(b) authorizing the special masters to shorten the time for submission of proposed findings of fact and conclusions of law in formal proceedings.

The amendment was proposed by a justice and two judges who sat as special masters in a formal proceeding. Prior to the amendment, rule 129(b) provided that the examiner and respondent judge shall submit to the masters proposed findings of fact and conclusions of law within 30 days after the mailing of the hearing transcript unless the masters waive the submission of such proposed findings and conclusions. The amendment gives the special masters discretion to shorten the amount of time for filing proposed findings and conclusions. The amendment recognizes that 30 days for filing proposed findings and conclusions is not always necessary, particularly in cases that do not involve numerous witnesses, multiple counts or complex issues.

No comments were received.

- E. Amendment to rule 129(c) shortening the time for submission of the report of the special masters and providing for extensions of time.

Prior to the amendment, rule 129(c) provided that the masters' report shall be submitted to the commission within 60 days of the mailing of the hearing transcript or 30 days after the submission of the parties' proposed findings and conclusions, whichever occurs later. The amendment shortens the amount of time for submission of the report to 45 days after mailing of the hearing transcript or 15 days after submission of the parties' proposed findings and conclusions, whichever occurs later, and authorizes the chair of the commission to grant an extension of time when appropriate.

The amendment recognizes that in many cases 45 days is a sufficient amount of time for preparation of the masters' report. If additional time is necessary in more complex matters or for other reasons, the chair of the commission or the chair's designee may grant additional time upon the request of the presiding master.

Three judges or justices who have served as special masters in recent formal proceedings indicated that they were in favor of the amendment. One of those judges expressed concern with the length of the process and urged the commission to set timelines to expedite the process. One justice who has served as a presiding special master in two formal proceedings, submitted a comment in opposition to the amendment. That justice expressed concern that the amendment would place additional time pressure on the masters, which would discourage judges and justices from volunteering to serve as special masters.

After consideration of the comments, the commission concluded that this amendment together with the amendments to rules 129(b) and 130 will shorten the formal proceedings process in most matters and result in a more expeditious resolution to the benefit of the judge and the public. In the commission's view, providing a mechanism for an extension of time in those matters that require more than 45 days to prepare the masters' report should alleviate any undue time pressure on the part of the masters.

- F. Amendment to rule 130 deleting subdivision (c) which authorized the submission of reply briefs to the commission during formal proceedings.

Prior to the amendment, rule 130 allowed the examiner and the judge to submit three briefs to the commission after the submission of the masters' report – an opening brief, response brief and reply brief. Each party's briefs are filed simultaneously. The amendment deletes subdivision (c) which authorizes the filing of a reply brief. The response brief gives each party an opportunity to respond to the arguments raised by their opponent in the opening briefs. After the filing of the briefs, the examiner and the judge are given the opportunity to be heard orally before the commission. (Rule 132.) As such, each party is given ample opportunity to present their position and arguments to the commission without the necessity of a reply brief. Deleting this step eliminates an unnecessary delay in the formal proceedings process.

No comments were received.

II. TEXT OF AMENDED RULES

ADDITION OF SUBDIVISION (p) TO RULE 102

(p) (Disclosure of information to Fair Political Practices Commission) The commission may release to the Fair Political Practices Commission (FPPC) at any time information which reveals possible violation of the Political Reform Act or FPPC Regulations by a judge, former judge, subordinate judicial officer or former subordinate judicial officer.

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ADDITION OF SUBSECTION (5) TO RULE 109, SUBDIVISION (c)

The amendment adds the following subsection to subdivision (c) of rule 109 which enumerates when the commission can authorize a staff inquiry or preliminary investigation of an SJO:

(5) The commission receives a complaint concerning a subordinate judicial officer who resigned or retired before the local court received the complaint.

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AMENDMENT TO RULE 122(g)(2)

(2) (Discovery Depositions)

The provisions of subpart (2) of subsection (g) of rule 122 shall take effect January 1, 2008, and shall be operative until ~~December 31, 2010~~ *December 31, 2012*, unless after review, they are reenacted by the commission.

AMENDMENT TO RULE 129(b)

(b) (Submission of proposed findings of fact and conclusions of law)

~~Within 30 days after mailing of the hearing transcript, Unless the masters specify an earlier date, the examiner and the respondent judge shall submit to the masters proposed findings of fact and conclusions of law, with citations to the transcript and exhibits, unless the masters waive the submission of such proposed findings and conclusions no later than 30 days after mailing of the hearing transcript.~~ Submission to the masters shall

occur by a delivery that results in actual receipt by them of the documents on or before the specified due date for submission. *The masters may waive the submission of such proposed findings and conclusions.*

AMENDMENT TO RULE 129(c)

(c) (Preparation of report of masters) Within ~~60~~ 45 days after mailing of the hearing transcript or within ~~30~~ 15 days after submission of the parties' proposed findings of fact and conclusions of law, whichever occurs later, the masters shall submit a report to the commission. Prior to the submission of their report, the masters may require such additional briefing and argument by the examiner and the respondent judge as the masters may desire. *Upon request of the presiding master, the chair of the commission or the chair's designee may grant additional time for the submission of the report of the masters to the commission.*

AMENDMENT TO RULE 130

The following subdivision of rule 130 has been deleted:

~~**(c) (Reply to response)** Within five days after the filing of a response, the examiner or the judge may file a reply to the response.~~